UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

KIEVA MYERS,

Plaintiff,

v.

BMW OF NORTH AMERICA, LLC,

Defendant.

Case No. 16-cv-00412-WHO

ORDER GRANTING MOTION TO DISMISS

Dkt. No. 21

INTRODUCTION

Plaintiff Kieva Meyers brings a putative class action against BMW of North America, LLC[1] ("BMW") alleging that the comfort access system of certain BMW X5 models is defective because it can cause the vehicles to spontaneously lock when the key remote is inside the vehicle. Meyers asserts that this is contrary to BMW's representations in its owners' manual that "To lock the vehicle, the remote control must be located outside of the vehicle." Based on this alleged defect and representation Meyers alleges four causes of action: (1) violations of California Business and Professions Code § 17200 ("UCL"), (2) Fraud by Omission, (3) Breach of Implied Warranty, and (4) violations of the Consumer Legal Remedies Act ("CLRA"). BMW moves to dismiss Meyers's claims on numerous bases including that Meyers (1) failed to allege her consumer protection and fraud claims with particularity, (2) has not pleaded reliance or actionable misrepresentation, (3) has not adequately alleged fraud by omission because BMW provided adequate warnings, (4) has not adequately alleged fraud by omission because she has not demonstrated that BMW had a duty to disclose, (5) has not alleged privity with BMW on her implied warranty claim, (6) and has not pleaded facts showing that her vehicle was

[1] Meyers originally brought individual and class claims against Bayerische Motoren Werke Aktiengesellschaft as well, but voluntarily dismissed these claims on August 5, 2016. Dkt. No. 28

unmerchantable. I heard oral argument on September 21, 2016. I GRANT BMW's motion to dismiss because Meyers has failed to allege reliance on her CLRA and UCL claims, has failed to allege active concealment on her common law fraud claim, and has failed to allege privity on her implied warranty claim. Meyers will have 20 days leave to amend her complaint.

BACKGROUND

Meyers purchased a 2013 BMW X5 in San Francisco for personal and family use. First Amended Complaint ("FAC") ¶ 2. Her car was equipped with the comfort access system, a convenience feature that works as follows: "The vehicle can be accessed without activating the remote control. All you need to do is to have the remote control with you, e.g., in your jacket pocket. The vehicle automatically detects the remote control when it is nearby or in the passenger compartment. Comfort access supports the following functions: Unlocking/locking of the vehicle." *Id.* ¶ 12 (quoting the BMW owners' manual). The owners' manual for her car provides instructions for operating the comfort access system and instructs: "Functional requirement: To lock the vehicle, the remote control must be located outside of the vehicle." *Id.* Meyers alleges that the comfort access system is defective because "sometimes while the remote control is located inside a Class Vehicle, the Class Vehicle spontaneously locks." *Id.* ¶ 13.

On October 19, 2015, Meyers experienced this alleged defect. *Id.* ¶ 16. She opened the rear door of her vehicle, placed her child inside, placed the remote inside the vehicle, shut the rear door, and walked around to the driver's door. *Id.* When she attempted to open the driver's door, the door was locked. *Id.* Because her child was too young to open the vehicle from inside, Meyers was forced to break a window to open the vehicle. *Id.* After this lockout, she lodged a complaint with BMW. *Id.* ¶ 19. Jay Hanson of BMW wrote an email to her explaining that "we must be dealing either with a malfunction of the locking system or an inadvertent activation of the locking system via either the remote transmitter or the Comfort Access System. Again, it is not impossible to lock a key in the vehicle – and to do so is not necessarily indicative of a malfunction. For example, if a door other than the driver's door is open and the locking button on the transmitter is pressed, the vehicle will lock when the open door is closed. If the user is unaware of having pressed the locking button, then it would certainly appear that it had somehow

locked itself." *Id.*

Meyers alleges that BMW knew of the comfort access defect in 2007 because an internal training document, entitled "Comfort Access vs-42 je 66 04 04 (093)" acknowledges that a "Class Vehicle's doors can lock while the Class Vehicle's key is inside the Class Vehicle." *Id.* ¶ 15. She states that numerous owners of BMW X5 vehicles have reported that their vehicles have automatically locked while the remote control has been inside of their vehicles. *Id.* ¶ 13. She pleads that, despite BMW's knowledge and awareness of the comfort access defect, it failed to make repairs to resolve the defect, failed to modify owners' manuals so that they are accurate, and failed to pay for damages suffered by consumers as a result of the comfort access defect. *Id.* ¶ 21. She contends that BMW knew the Class Vehicles were defective and not fit for their intended purpose and concealed and failed to disclose the defect to her and the class members at the time of purchase or thereafter. *Id.* ¶ 25.

Meyers alleges that BMW widely advertises that its "Class Vehicles are extremely safe vehicles, and are in fact, 'The Ultimate Driving Machine.' " *Id.* ¶ 20. However, because of the comfort access defect, the cars are not safe. *Id.*

Meyers bring claims alleging (1) violations of the California Unfair Competition Law ("UCL"), (2) Fraud by Omission, (3) Breach of Implied Warranty, and (4) violations of the CLRA. BMW moves to dismiss all of Meyers's claims under Federal Rule of Civil Procedure 12(b)(6) asserting that Meyers has failed to state a viable claim. It contends that there is no defect with the comfort access system, that it has never represented that it is impossible for drivers to lock themselves out of a BMW X5 vehicle, that it has instead affirmatively warned drivers of the possibility of lockouts or a malfunction of the comfort access system, and that Meyers's subjective misreading of the BMW owner's manual is insufficient to support her claims. BMW argues that dismissal is appropriate because Meyers has (1) failed to plead her fraud claims with particularity or adequately alleged a defect, (2) has not established that BMW had a duty to disclose, (3) is not in privity with BMW, necessary for her implied warranty claim, and (4) has not alleged that the vehicles were unmerchantable. I heard argument on BMW's motion on September 21, 2016.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). A claim is facially plausible when the plaintiff pleads facts that "allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). There must be "more than a sheer possibility that a defendant has acted unlawfully." *Id.* While courts do not require "heightened fact pleading of specifics," a plaintiff must allege facts sufficient to "raise a right to relief above the speculative level." *See Twombly*, 550 U.S. at 555, 570.

In deciding whether the plaintiff has stated a claim upon which relief can be granted, the Court accepts the plaintiff's allegations as true and draws all reasonable inferences in favor of the plaintiff. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court is not required to accept as true "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *See In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008).

Federal Rule of Civil Procedure 9(b) imposes a heightened pleading standard where a complaint alleges fraud or mistake. Under FRCP 9(b), to state a claim for fraud, a party must plead with "particularity the circumstances constituting the fraud," and the allegations must "be specific enough to give defendants notice of the particular misconduct . . . so that they can defend against the charge and not just deny that they have done anything wrong." *See Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir.2009) (citation omitted). "Averments of fraud must be accompanied by the who, what, when, where, and how of the misconduct charged." *Vess v. Ciba-Geigy Corp.*, 317 F.3d 1097, 1106 (9th Cir. 2003) (citation omitted).

If the court dismisses the complaint, it "should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." *See Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). In making this determination, the court should consider factors such as "the presence or absence of

undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party and futility of the proposed amendment." *See Moore v. Kayport Package Express*, 885 F.2d 531, 538 (9th Cir.1989).

DISCUSSION

I. UCL, FRAUD, AND CLRA CLAIMS

Meyers alleges that BMW committed fraud by omission and engaged in deceptive and fraudulent business practices by failing to disclose to consumers that the comfort access system sometimes causes vehicles to spontaneously lock when the key remote is inside the vehicle. FAC ¶ 13, 30. Meyers brings claims under the CLRA, the UCL, and alleges a general violation of fraud by omission.

To sustain a fraudulent omission claim under the CLRA or the UCL, a plaintiff must allege either that the "omission is contrary to a representation actually made by the defendant, or an omission of a fact the defendant was obligated to disclose." *Falk v. Gen. Motors Corp.*, 496 F. Supp. 2d 1088, 1094-95 (N.D. Cal. 2007). Further, the plaintiff must allege that the omission is related to a "safety issue." *Wilson*, 668 F.3d at 1141. To properly allege an actionable omission with regards to a safety issue, plaintiffs must allege (1) a defect; (2) a safety hazard; (3) a causal connection between the alleged defect and the alleged safety hazard; and (4) that the defendant knew of the defect at the time a sale was made. *Id.* at 1143-45.

A. Duty to Disclose

A plaintiff may assert duty to disclose in four circumstances: "(1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material fact." *Falk*, 496 F. Supp. 2d at 1095.

Meyers has alleged that BMW had a duty to disclose because it had exclusive knowledge of the comfort access defect. She pleads that BMW knew of the defect through its "dealerships, pre-release data, and training manuals, among other internal sources of aggregate information about the problem." FAC ¶ 29. She further submits three customer complaints from BMW X5

owners which were submitted to the National Highway Traffic Safety Administration ("NHTSA"). *Id.* ¶ 13. At least two of these complaints, dating from 2010 and 2011 appear to pre-date Meyers's purchase of her car, which is a 2013 model. *Id.*[2]

Courts disagree on whether consumer complaints are sufficient to demonstrate that a defendant knew of an alleged defect. *See Wilson v. Hewlett-Packard Co.*, 668 F.3d 1136 (9th Cir. 2012). In *Wilson*, the Ninth Circuit noted that some courts have found that customer complaints can give rise to an inference that defendants knew of a defect, while others have said that such complaints, on their own, are insufficient to show such knowledge. *Compare Kowalsky v. Hewlett-Packard Co.*, 771 F. Supp. 2d 1138, 1145 (N.D. Cal. 2010) ("[I]n some cases, allegations of consumer complaints posted on a defendant's own customer support website may be sufficient to raise a reasonable inference that the defendant knew of a product defect."), *with Berenblat v. Apple, Inc.*, No 08-cv-4969-PVT, 2010 WL 1460297, at *9 (N.D. Cal. 2010) (Customer complaint, "[b]y themselves [] are insufficient to show that [the manufacturer] had knowledge [of the defect].").

The Ninth Circuit's discussion in *Wilson* suggests that customer complaints may support knowledge when they are submitted to a forum the defendant is likely to view, and where they are submitted before the plaintiff purchased the product. In *Wilson* the court concluded that plaintiffs had not adequately alleged exclusive knowledge where they pointed to "undated customer complaints" from an unclear source, and also alleged that HP had "access to the aggregate information and data" related to the claimed defect. *Wilson*, 668 F.3d at 1146-47. The *Wilson* court criticized the value of the customer complaints, noting that plaintiffs did not indicate "when or how the complaints were made." The court also highlighted that, because the complaints were undated, they could "not support an inference that HP was aware of the defect at the time it sold

[2] Meyers also alleges that a 2007 internal training document titled "Comfort Access vs-42 je 66 04 04 (093)" demonstrates that BMW knew of the comfort access defect in 2007 because the document acknowledges that "a Class Vehicle's doors can lock while the Class Vehicle's key is inside the Class Vehicle." FAC ¶ 15. Meyers does not cite to a particular section of the document that acknowledges this information. However, simply acknowledging that the vehicle's doors can lock while the Class Vehicle's key is inside the Class Vehicle does not necessarily indicate an awareness that the comfort access system causes vehicles to spontaneously lock. I therefore do not rely on the training document in my analysis.

the Laptops to Plaintiffs." *Id.* at 1148.

Here, Meyers has submitted several dated complaints posted to the NHTSA website. As two of these complaints are dated prior to the time Meyers must have purchased her car, BMW could have accessed this information and been aware of the complaints at the time Meyers purchased her vehicle. Further, because manufacturers such as BMW use the NHTSA website to communicate information to consumers, it is reasonable to infer that BMW has knowledge of and is aware of the complaints submitted by consumers to the NHTSA. These consumer complaints, in conjunction with Meyers's other allegations that BMW knew of the comfort access defect through its "dealerships, pre-release data, and training manuals, among other internal sources of aggregate information about the problem," can give rise to the inference that BMW knew of the comfort access defect and had a duty to disclose it. Meyers has adequately pleaded that BMW had exclusive knowledge of the comfort access defect.

Meyers has also alleged that BMW made a partial representation regarding the comfort access system. She states that BMW represented to consumers that "To lock the vehicle, the remote control must be located outside of the vehicle." FAC ¶ 19. This statement could indicate to consumers that the comfort access system will not lock the vehicle unless the remote control is outside the vehicle. She asserts that contrary to this, the comfort access system is defective, and can cause vehicles to spontaneously lock when the remote is inside. *Id.* ¶ 13. Accepting her allegations as true, BMW's representation about the function of the comfort access system is misleading. The statement, which indicates that a user can only activate the comfort access system if the key remote is outside the car, may be literally true, but it omits that the system may nevertheless spontaneously activate the locks on its own while the remote is inside the vehicle. On these facts, Meyers has adequately pleaded partial representation and a duty to disclose. *See In re Apple In-App Purchas Litig.*, 855 F. Supp. 2d 1030, 1039 (N.D. Cal. 2012) (partial representation was met where defendant represented that its app was free, but did not disclose the potential for in-app purchases). She has adequately alleged that BMW made a partial representation regarding the comfort access system.

Meyers has adequately pleaded that BMW had a duty to disclose because it had exclusive

knowledge of the comfort access defect, and because it made a partial representation about the comfort access defect. Although as discussed below, Meyers has failed to adequately plead active concealment, because Meyers has pleaded two viable theories to sustain her fraud by omission claim, I will not dismiss her CLRA or UCL claims for this reason.

B. Defect

Meyers has adequately alleged a design defect. Meyers alleges that the comfort access system is defective because "sometimes while the remote control is located inside a Class Vehicle, the Class Vehicle spontaneously locks." FAC ¶ 13. Although Meyers does not allege the mechanical method by which this happens, she identifies that the defect is with the comfort access system, she notes the defect works by spontaneously locking the vehicle, and she alleges that this happens when the remote control is located inside the vehicle. *Id.* Meyers also presents factual allegations from her own personal experience where she believes the comfort access system caused the vehicle to spontaneously lock. *Id.* ¶ 16. She also submits customer complaints in which individuals recount similar lockout experiences where their BMW's have spontaneously locked while their keys were inside the vehicle. *Id.* ¶ 13. These factual allegations, that the comfort access system can, and has, spontaneously locked vehicles while the keys were inside, are sufficient to allege a design defect with the comfort access system.

C. Safety Hazard

Meyers has adequately alleged "the existence of an unreasonable safety risk." *Wilson*, 668 F.3d at 1145. She asserts that the comfort access system's spontaneous locking defect creates an unreasonable safety risk that children will be locked inside a car. FAC ¶ 18. She cites that "[f]rom 1998 to 2015, ever year at least 24 children have died from heatstroke as the result of being locked inside vehicles." *Id.* She has adequately pleaded the existence of an unreasonable safety risk because she has alleged that children locked in vehicles can suffer serious injury and death.

D. Causal Connection Between Alleged Defect and Alleged Safety Risk

Meyers has also adequately alleged a causal connection between the alleged defect and alleged safety risk because she states that the comfort access system's spontaneous locking defect

increases the risk that children will be locked in cars. *Id.* She explains that she personally locked her child in the car as a result of the comfort access defect and points to consumer complaints where other BMW X5 drivers have had similar experiences. *Id.* ¶ 13. BMW argues that Meyers has not adequately alleged a causal connection because the BMW owners' manual instructs that drivers should always take their key remotes with them, and the comfort access system does not present any safety risk if used as intended. Motion to Dismiss ("Mot."), 13 (Dkt. No. 21-1). While it appears that Meyers could have prevented a lockout by keeping her key remote on her person, this does not mean there is no causal link between the defect and the safety risk. Even if there are ways to prevent lockouts, the comfort access defect may make it more likely for drivers to lock their children in cars if, as alleged, it causes the vehicles to spontaneously lock. Meyers suggests that the comfort access defect makes it more likely that a driver will inadvertently lock a child in the car. This is sufficient to plead a direct link between the defect alleged – spontaneous locking – and the safety hazard alleged – children locked in cars.

E. Reliance

BMW argues that Meyers cannot sustain her UCL and CLRA claims because she has not alleged actual reliance. Mot. 4. Meyers contends that that she need not allege actual reliance on an omission claim and, alternatively, argues that the court can infer that she saw BMW advertisements promoting its vehicles as safe and relied on them. Opposition ("Oppo.") 20, (Dkt. No. 31).

"For fraud based claims under the CLRA and UCL, plaintiff must also plead actual reliance." *Ehrlich v. BMW of North America, LLC*, 801 F. Supp. 2d 908, 919 (C.D. Cal. 2010). "To prove reliance on an omission, a plaintiff must show that the defendant's nondisclosure was an immediate cause of the plaintiff's injury-producing conduct. A plaintiff may do so by simply proving that, had the omitted information been disclosed, one would have been aware of it and behaved differently. That one would have behaved differently can be presumed, or at least inferred, when the omission is material." *Daniel v. Ford Motor Co.*, 806 F. 3d 1217, 1225 (9th Cir. 2015) (internal citations and quotations omitted).

Meyers has adequately alleged that the omission at issue was material because it related to

a safety hazard. *See Ehrlich v. BMW of N. Am., LLC*, 801 F. Supp. 2d 908, 917-19 (C.D. Cal. 2010) (Alleged defects that create "unreasonable safety risks" are material.). But she must also show that, had the omitted information been disclosed, she would have been aware of it. *Daniel*, 806 F. 3d at 1225.

Meyers has alleged no facts indicating that she saw or relied on any BMW materials or advertisements. Although she makes general allegations that BMW advertises its vehicles, she does not allege that she herself viewed any of these materials. BMW argues that because she has not alleged any facts indicating that she viewed or relied on BMW representations, she cannot plausibly allege that, had a disclosure been made regarding the comfort access defect, she would have seen it.

In *Daniel*, the Ninth Circuit noted that there are "various ways in which a plaintiff can demonstrate that she would have been aware of a defect, had disclosure been made." *Daniel*, 806 F. 3d at 1226. Although the plaintiffs in that case had not viewed any advertisements, the Ninth Circuit concluded that they had adequately alleged that they would have been aware of a defect, had Ford disclosed it, because they "presented evidence that they interacted with and received information from sales representatives at authorized Ford dealerships prior to purchasing their Focuses." *Id.* While *Daniel* supports the idea that there are many ways a plaintiff can establish reliance, Meyers has not alleged any facts to indicate that she would have been aware of a disclosure if one was made. Unlike in *Daniel*, Meyers does not allege that she interacted with BMW representatives or sales associates prior to purchasing her vehicle. She does not disclose when or from whom she purchased her vehicle and does not provide any details indicating that she relied on BMW's alleged omissions. While the standard for pleading reliance in an omission case is low, Meyers has not provided any facts that would indicate she relied on BMW's omissions.

Meyers has adequately alleged (1) that BMW had a duty to disclose information on the comfort access defect because it had exclusive knowledge and because it made partial representations; (2) that there is a comfort access defect that causes spontaneous locking; (3) that children locked in cars is an unreasonable safety hazard; and (4) that there is a causal link between the spontaneous locking and the hazard of locking children in cars. She has not adequately alleged

reliance. Because this is a necessary component of any consumer UCL or CLRA claim, she has not adequately alleged fraud by omission under the UCL and CLRA. I GRANT BMW's motion to dismiss these claims.

To the extent that Meyers intends to bring a misrepresentation or "unfair" claim under the UCL or CLRA, Meyers's failure to allege reliance is fatal to these claims as well. I GRANT BMW's motion to dismiss any remaining UCL and CLRA claims.

II. COMMON LAW FRAUD

To sustain a California common law fraudulent omission claim, a plaintiff must allege: "(1) the defendant concealed or suppressed a material fact; (2) the defendant was under a duty to disclose the fact to the plaintiff; (3) the defendant must have intentionally concealed or suppressed the facts with the intent to defraud the plaintiff; (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage." *Jordan v. Paul Financial, LLC*, 285 F.R.D. 435, 454 (N.D. Cal. 2012). These elements are "essentially identical to those for a claim of active concealment under the CLRA and the UCL fraud prong." *Elias v. Hewlett-Packard Co.*, No. 12-cv-00421-LHK, 2014 WL 493034, *5 (N.D. Cal. 2014)

Meyers has not adequately alleged active concealment because she has not alleged that BMW took any affirmative acts to conceal. "An allegation of active concealment must plead more than an omission; rather, a plaintiff must assert affirmative acts of concealment; e.g., that the defendant sought to suppress information in the public domain or obscure the consumers' ability to discover it." *Taragan v. Nissan North America, Inc.*, No. 09-cv-3660-SBA, 2013 WL 3157918, *7 (N.D. Cal. Jun. 20, 2013). Meyers alleges that BMW actively concealed the comfort access defect because "Defendants did not disclose to consumers that the Comfort Access Defect exists, did not reimburse consumers for costs incurred in connection with the Comfort Access Defect, and did not correct mistakes in Class Vehicles' owner's manuals." FAC ¶ 52. This is insufficient because Meyers has alleged only that BMW failed to disclose or take certain actions. These alleged omissions are insufficient to sustain an active concealment claim.

BMW's motion to dismiss this claim is GRANTED.

III. IMPLIED WARRANTY OF MERCHANTABILITY

Meyers has failed to adequately plead a breach of the implied warranty of merchantability under the California Commercial Code because she has not alleged facts indicating she is in privity with BMW or that she falls under an exception to the privity requirement. "Under California Commercial Code section 2314 . . . a plaintiff asserting breach of warranty claims must stand in vertical contractual privity with the defendant." *Clemens v. Daimlerchrysler*, 534 F.3d 1017, 1023 (9th Cir. 2008). "[A]n end consumer . . . who buys from a retailer is not in privity with a manufacturer." *Id.* There are two exceptions to this general privity requirement: (1) "when the plaintiff relies on written labels or advertisements of a manufacturer," and (2) "where the end user is an employee of the purchaser." *Id.* at 1024.

Meyers does not allege when, or from whom, she purchased her BMW X5. She pleads only that she purchased her vehicle in San Francisco. FAC ¶ 2. While it is unclear from whom she purchased her BMW X5, she could not have purchased it directly from BMW, which manufactures, but does not sell vehicles, directly to consumers. She is, therefore, not in privity with BMW.

Meyers does not fall under either of the privity exceptions in implied warranty cases. She does not allege that she relied on any written labels or advertisements of BMW when she purchased her vehicle. Although she states generally that BMW advertises that its "Class Vehicles are extremely safe vehicles, and are in fact, 'The Ultimate Driving Machine,' " she does not allege that she personally viewed, read, or relied on any such advertisements. *Id.* ¶ 20. Further, she clearly does not fall under the second exception as she was not an employee of the purchaser. As Meyers is not in privity with BMW and does not fall under one of the exceptions to the privity requirement, her implied warranty claim fails. *Clemens*, 534 F.3d at 1023.

In her opposition, Meyers argues that privity is not required in implied warranty cases brought under the Song-Beverly Consumer Warranty Act. Oppo. 27. However, she has not alleged a claim under this Act. Because I cannot consider claims brought for the first time in the pleadings, and because she has not alleged vertical privity, as required by *Clemens*, to sustain a

claim under the California Commercial Code, I GRANT BMW's motion to dismiss Meyers's implied warrant claim.

CONCLUSION

For the reasons outlined above I GRANT BMW's motion to dismiss Meyers's UCL and CLRA fraudulent omission claims; GRANT BMW's motion to dismiss Meyers's remaining UCL and CLRA claims; GRANT BMW's motion to dismiss Meyers's Common Law Fraud claim; and GRANT BMW's motion to dismiss Meyers's Implied Warranty Claim. Meyers will have 20 days to file an amended complaint.

IT IS SO ORDERED.

Dated: October 11, 2016

WILLIAM H. ORRICK
United States District Judge

United States District Court
Northern District of California